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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,621	10/28/2003	Stefan Kiefer	13914-016001 / 2003P00626	3903
32864 7590 06/05/2009 FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER FADOK, MARK A	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 06/05/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,621	<b>Applicant(s)</b> KIEFER ET AL.	
	<b>Examiner</b> MARK FADOK	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15 and 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The examiner is in receipt of applicant's response to office action mailed 9/16/2008, which was received 2/20/2009. Acknowledgement is made to the amendment to claims 13,28 and 31. The examiner has carefully considered applicant's remarks and amendments, but does not find them persuasive, therefore the previous rejection modified as necessitated by amendment follows:

### **Examiner's Note**

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 1 and 28, the structure of the claim does not indicate which if any of the steps are being accomplished using a computer. Further, based on Supreme Court precedence see *Diamond v Diehr* 450 US 175,184 (1981); *Parker v. Flook*, 437 US 584,588,n. 9 (1978); *Gottschalk v Benson*, 409 US 63, 70 (1972); *Cochrane v Deener*, 94 US 780, 787-88 (1876) a 101 process must (1) be tied to another statutory class (such as an apparatus) or transform underlying subject matter (such as an article or materials) to a different state or thing. Since neither of these requirements is met by the claim the claim is rejected as being directed to non-statutory subject matter. The examiner suggests that applicant change to In a computer system rather than with the computer system.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 13-15 and 21,23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al (2006/0149653) in view of Kendal et al (US PG PUB 20030191672).**

**In regards to claim 13**, Davis discloses a computer-implemented method of managing bid pricing information, comprising: receiving transaction information and item data from a buyer (FIG 19);

generating a bid invitation containing entries relating to the transaction information and item data (FIG 19), and

making the bid invitation available to a plurality of potential bidders (FIG 19, item 605);

receiving from one or more of the potential bidders bid responses containing a complex pricing structure and corresponding complex pricing amounts (FIG 19A);

wherein the complex pricing structure is selected by the potential bidders from among a group or multiple pricing structures made available to the potential bidders (para 0026, pricing from different locations is provided to the buyer, each location has a different structure), and

wherein the complex pricing structure is selected and supplied by each potential bidder (para 0010) and

the complex pricing structures supplied by two or more potential bidders include bids with multiple different pricing amounts. (para 0019, 0034 and 0037,00148)  
applicant's specification defines complex pricing in terms of discount pricing, see applicant's specification PG PUB 20050091122, para 0028 for a definition of complex pricing that includes volume discounts), since these complex pricing scenarios are

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distributed to others when an auction is reopened to allow other suppliers to provide the same complex bidding (Davis, para 0019) the limitation of at least two bidders providing multiple different pricing amounts is taught by Davis. Applicant may argue that the different discounts are not specifically noted as prices but terms, however as is clear in para 0034, 0035 and 0148 of Davis, costs of the product provide in a complex pricing when scenarios are run applying the different scenarios and resulting in a variable cost/price or complex pricing.

Davis teaches providing proposals from a bidder (proposal with a terms and a corresponding price, but does not specifically mention that there is a “set of prices” (from applicant’s specification) that are set up for the proposal. The examiner takes official notice that providing a proposal with terms that include process that vary over time for setting up a long term contract proposal where the prices escalate over time was old and well known in the art at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time the invention to include in Davis providing a proposal with complex pricing including variable price sets, because these types of contracts are well known in the art and are used to adjust pricing over a long term contract and including this in a proposal will open the system up to very valuable long term contracts that can add increased functionality and revenue.

Further Davis does not specifically mention that each bidder provides multiple different proposals with each proposal. However, Kendal teaches sending in multiple proposals for a single bid (Kendal para 0083). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Davis and Official

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Notice each bidder provides multiple different proposals with each proposal as is taught by Kendall, because multiple rating can be generated with multiple prices and can therefore increase the likelihood of providing the winning bid. and

selecting a winning bidder based at least in part on the complex pricing amounts (FIG 19B).

**In regards to claim 14**, the combination of Davis, Official Notice and Kendall teach wherein a complex pricing structure from a first bidder is made available for review by other potential bidders (FIG 19B, item 627).

**In regards to claim 15**, the combination of Davis, Official Notice and Kendall teach wherein complex pricing amounts from a first bidder are made available for review by other potential bidders (FIG 19B, item 627).

**In regards to claim 21**, the combination of Davis, Official Notice and Kendall teach wherein the complex pricing structure comprises date-based pricing information (FIG 19B, item 614).

**In regards to claim 22**, the combination of Davis, Official Notice and Kendall teach wherein the bid response from a first bidder of the plurality of bidders contains

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multiple bid prices for a particular item, with each bid price being associated with different terms identified and specified by the bidder (see response to claim 13).

**In regards to claim 23**, the combination of Davis, Official Notice and Kendall teach providing the different bid terms from the first bidder, but not the bid prices, to the plurality of bidders other than the first bidder, and seeking bid prices from the plurality of bidders other than the first bidder for the different bid terms (para 0156).

**In regards to claim 24**, the combination of Davis, Official Notice and Kendall teaches wherein the different terms and the bid prices correspond to geographical location specific information (see response to claim 13)

**In regards to claim 25**, the combination of Davis, Official Notice and Kendall teach wherein the multiple different pricing amounts comprise multiple prices from a particular bidder for a particular bid item (Kendal, para 0083).

**In regards to claim 26**, the combination of Davis, Official Notice and Kendall teach aggregating bids received from the plurality of bidders when a bidding period has ended (FIG 21).



**In regards to claim 27**, the combination of Davis, Official Notice and Kendall teach normalizing prices of the aggregated bids to permit comparison among differing bids (FIG 21).

**In regards to claim 28**, the combination of Davis, Official Notice and Kendall teach a computer-implemented method of managing bid pricing information, comprising: receiving from an owner transaction information regarding an item on which the owner seeks bids;

generating a bid invitation including the information regarding the item and making the bid invitation available to a plurality of potential bidders;

receiving from a first bidder a plurality of bid proposals for an item, where each bid proposal is arranged to be separately accepted buy the buyer and is characterized by a set of prices and a set of terms supplied by the buyer corresponding to the set of prices (para 0026, pricing from different locations is provided to the buyer, each location has a different structure and therefore different pricing and terms associated with the buyer selected location); and

selecting a winning bidder based on the pricing sets and corresponding term sets (see response to claim 13).

**In regards to claim 29**, the combination of Davis, Official Notice and Kendall teach making the terms of the bid response received from the first bidder, available to other of the potential bidders, and receiving prices from at least some of the other potential bidders (para 0156)

**In regards to claim 30**, the combination of Davis, Official Notice and Kendall teach concealing from the other potential bidders the prices bid by the first bidder (para 0156)

**In regards to claim 31**, the combination of Davis, Official Notice and Kendall teach aggregating the bid prices for bids from different sellers that have common terms to permit comparison among different bids (FIG 21).

### ***Response to Arguments***

Applicant's arguments filed 2/20/2009 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regards to claims 13 and 28, applicant is directed to the new rejection necessitated by amendment *supra*.

In regards to claim 23, applicant argues that Davis does not teach only providing the terms and not the prices for other bidders to bid on. The examiner disagrees and directs applicant's attention to para 0156 where the buyer is provided with the functionality to "choose an option that allows the supplier to view certain aspects of any other proposal during a negotiation. Davis further teaches capability to allow the user to not display pricing from competitive source (para 232-234). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in the combination of Davis, Official Notice and Kendal, not displaying pricing from competing suppliers but provide only the terms, because during negotiations with a competing supplier it is well known not to divulge the price but provide the terms that were given to provide to an apples to apples price bidding war. This is evident when buyers go to different car dealers and negotiate prices on offers that were made at another dealer. If the price is given to the next dealer, the buyer will not be able to find the true lowest price that the vehicle may be purchased since the seller knows the current low bid.

In regards to claim 24, Applicant argues that the combination of Davis and Kendal does not teach the terms and bid process correspond to geographic location specific information (see response to claim 13 and Davis para 0026).

In regards to claim 27, applicant argues that Davis does not teach normalizing of the bids to help in comparison. The examiner disagrees and directs the applicant to para 0037 where it is clearly taught that the different proposals are normalized to create an effective comparison for the buyer.

### ***Lack of Official Notice Traverse***

A “traverse” is a denial of an opposing party’s allegations of fact. The Examiner respectfully submits that applicants’ arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants’ arguments and comments as constituting a traverse, applicants’ arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner’s notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

Alexandria, Va. 22313-1450

or faxed to:

**571-273-8300**

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Mark Fadok/

Primary Examiner, Art Unit 3625